

**House File 191 - Introduced**

HOUSE FILE 191

BY HUNTER

**A BILL FOR**

1 An Act relating to due process requirements associated with  
2 child abuse assessments performed by the department of human  
3 services and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.71B, subsection 4, paragraph e, Code  
2 2011, is amended to read as follows:

3 e. (1) An interview of the person alleged to have committed  
4 the child abuse, if the person's identity and location are  
5 known. The offer of an interview shall be made to the person  
6 prior to any consideration or determination being made that  
7 the person committed the alleged abuse. The person shall be  
8 informed of the complaint or allegation made regarding the  
9 person. The person shall be informed in a manner that protects  
10 the confidentiality rights of the individual who reported the  
11 child abuse or provided information as part of the assessment  
12 process. The purpose of the interview shall be to provide the  
13 person with the opportunity to explain or rebut the allegations  
14 of the child abuse report or other allegations made during  
15 the assessment. The court may waive the requirement to offer  
16 the interview only for good cause. The person offered an  
17 interview, or the person's attorney on the person's behalf, may  
18 decline the offer of an interview of the person or terminate an  
19 interview at any time.

20 (2) Prior to conducting the interview, the child protection  
21 worker shall provide written notification to the person that  
22 the person is being interviewed for having been alleged to  
23 have committed child abuse including notification of the  
24 nature of the child abuse being assessed, the possible civil  
25 administrative consequences of founded abuse, the requirement  
26 that the department forward a report to law enforcement if the  
27 department's assessment reveals a potential criminal offense,  
28 and that the person has the right to retain legal counsel at  
29 the person's expense. If the alleged child abuse is related  
30 to the person's employment, the person may choose to have  
31 legal counsel, union representation, or any other desired  
32 representative of the person or the person's employer present  
33 during the interview. The person alleged to have committed the  
34 child abuse shall inform the child protection worker of the  
35 representatives desired to be present during the interview and

1 not delay the interview by more than five working days to make  
2 arrangements for the person's representatives to be present at  
3 the interview. Any employer representative shall be informed  
4 of the requirement to maintain strict confidentiality and of  
5 the prohibition against redissemination of such information  
6 pursuant to chapter 235A.

7 (3) At the interview, the child protection worker shall  
8 request and the person alleged to have committed the child  
9 abuse shall provide the person's most current contact  
10 information to facilitate provision of the results of the  
11 assessment to the person.

12 Sec. 2. Section 232.71B, subsection 6, Code 2011, is amended  
13 to read as follows:

14 6. Facility, ~~or~~ school, or program visit.

15 a. The assessment may include a visit to a facility or  
16 program providing care to the child named in the report or to  
17 any public or private school subject to the authority of the  
18 department of education where the child named in the report  
19 is located. The administrator of a facility or program, or  
20 a public or private school shall cooperate with the child  
21 protection worker by providing confidential access to the child  
22 named in the report for the purpose of interviewing the child,  
23 and shall allow the child protection worker confidential access  
24 to other children for the purpose of conducting interviews in  
25 order to obtain relevant information. The child protection  
26 worker may observe a child named in a report in accordance with  
27 the provisions of section 232.68, subsection 3, paragraph "b".  
28 A witness shall be present during an observation of a child.  
29 Any child aged ten years of age or older can terminate contact  
30 with the child protection worker by stating or indicating  
31 the child's wish to discontinue the contact. The immunity  
32 granted by section 232.73 applies to acts or omissions in good  
33 faith of administrators and their facilities, programs, or  
34 school districts for cooperating in an assessment and allowing  
35 confidential access to a child.

1 b. If the person alleged to have committed the child  
2 abuse is employed by a facility, program, or school and the  
3 child protection worker believes the situation involves an  
4 immediate danger to the public health, safety, or welfare  
5 requiring immediate agency action to seek emergency placement  
6 on the central registry, the department may utilize emergency  
7 adjudicative proceedings pursuant to section 17A.18A.

8 c. A child protection worker may enter any facility,  
9 program, or school without a warrant and may examine all  
10 records pertaining to children who attend, employees, former  
11 employees, and the person alleged to have committed the child  
12 abuse.

13 d. Independent of the department's assessment, the facility,  
14 program, or school employing the person alleged to have  
15 committed the child abuse shall conduct an investigation of  
16 the alleged child abuse and determine what, if any, employment  
17 action should be taken including but not limited to placing the  
18 person on administrative leave or reassigning or terminating  
19 the person as a result of the investigation by the facility,  
20 program, or school. If the facility, program, or school  
21 terminates the person as a result of the investigation by  
22 the facility, program, or school or the person resigns, the  
23 person shall disclose such termination or investigation to any  
24 prospective facility, program, or school employer. Such a  
25 person who fails to disclose such termination or investigation  
26 commits a simple misdemeanor.

27 Sec. 3. Section 232.71B, subsection 12, paragraph g, Code  
28 2011, is amended to read as follows:

29 g. (1) The department shall notify each subject of  
30 the child abuse report, as identified in section 235A.15,  
31 subsection 2, paragraph "a", of the results of the assessment,  
32 of the subject's right, pursuant to section 235A.19, to  
33 correct the report data or disposition data which refers to the  
34 subject, and of the procedures to correct the data. The notice  
35 shall also detail the consequences of placement of the person's

1 name on the central child abuse registry.

2 (2) If the alleged child abuse is employment-related, the  
3 department shall also notify the employer of the results of the  
4 assessment.

5 Sec. 4. Section 235A.19, subsection 2, paragraph a, Code  
6 2011, is amended to read as follows:

7 a. (1) A subject of a child abuse report may file with the  
8 department within six months of the date of the notice of the  
9 results of an assessment performed in accordance with section  
10 232.71B, a written statement to the effect that report data and  
11 disposition data referring to the subject is in whole or in  
12 part erroneous, and may request a correction of that data or of  
13 the findings of the assessment report. The department shall  
14 provide the subject with an opportunity for an ~~evidentiary~~ a  
15 contested case hearing pursuant to chapter 17A to correct the  
16 data or the findings, unless the department corrects the data  
17 or findings as requested. The department may defer the hearing  
18 until the conclusion of a pending juvenile or district court  
19 case relating to the data or findings.

20 (2) In lieu of filing under subparagraph (1), if the subject  
21 of a child abuse report files such a request for correction  
22 of report data and disposition data or of the findings of the  
23 assessment report within fifteen days of the date of the notice  
24 of the results of an assessment, the department shall not place  
25 child abuse information referring to the subject on the central  
26 abuse registry until final agency action is taken. A contested  
27 case hearing on the request shall be held within sixty days of  
28 the request. The subject may extend the hearing timeframe by  
29 thirty days one time. Additional requests for an extension  
30 must be agreed upon by all parties or necessitated by good  
31 cause. The administrative law judge's proposed decision shall  
32 be issued within thirty days of the contested case hearing.  
33 If further review of the decision is not requested before the  
34 proposed decision becomes final, the proposed decision shall be  
35 deemed final agency action. If further review is requested,

1 the department's final agency action shall occur within thirty  
2 days of the issuance of the administrative law judge's proposed  
3 decision. Upon final agency action, further appeal rights  
4 shall be governed by subsection 3.

5 Sec. 5. Section 235A.19, subsection 3, Code 2011, is amended  
6 to read as follows:

7 3. The subject of a child abuse report may appeal the  
8 final agency decision resulting from a hearing held pursuant  
9 to subsection 2 to the district court of Polk county or to the  
10 district court of the district in which the subject of the  
11 child abuse report resides. Immediately upon appeal the court  
12 shall order the department to file with the court a certified  
13 copy of the report data or disposition data. Appeal shall be  
14 taken in accordance with chapter 17A.

15 EXPLANATION

16 This bill relates to due process requirements associated  
17 with child abuse assessments performed by the department of  
18 human services.

19 Code section 232.71B, relating to assessments performed  
20 by the department in response to a report of child abuse,  
21 is amended in several ways. Existing requirements for an  
22 interview of a person alleged to have committed the child  
23 abuse are expanded to allow the subject to terminate an  
24 interview at any time, to require written notification of the  
25 person providing information about the process, procedural  
26 protections, potential effects of a child abuse finding, and to  
27 allow representatives of the person or the person's employer  
28 to be present at the interview. The child protection worker  
29 is required to request and the person to provide contact  
30 information.

31 Existing requirements for a child protection worker's visit  
32 to a facility providing care to the child named in the report  
33 are expanded to include a program providing the care. If the  
34 person alleged to have committed the child abuse is employed by  
35 a facility, program, or school and the child protection worker

1 believes the situation involves an immediate danger to the  
2 public health, safety, or welfare requiring immediate placement  
3 on the child abuse registry, the department may utilize an  
4 emergency adjudicative proceeding pursuant to section 17A.18A.

5 A child protection worker may enter any facility, program,  
6 or school without a warrant and examine all records pertaining  
7 to children who attend, employees, former employees, and the  
8 person alleged to have committed the child abuse.

9 Independent of the department's assessment, the facility,  
10 program, or school employing the person alleged to have  
11 committed the child abuse is required to conduct an  
12 investigation of the alleged child abuse and determine what,  
13 if any, employment action should be taken including but not  
14 limited to placing the person on administrative leave or  
15 reassigning or terminating the person as a result of the  
16 investigation. If the facility, program, or school terminates  
17 the person or the person resigns, the person is required to  
18 disclose such termination or investigation to any prospective  
19 facility, program, or school employer. A person who fails to  
20 disclose such termination or investigation commits a simple  
21 misdemeanor. A simple misdemeanor is punishable by confinement  
22 for no more than 30 days or a fine of at least \$65 but not more  
23 than \$625 or by both.

24 The requirements of the department to notify subjects of  
25 a child abuse report (these persons or their attorneys: the  
26 child, the child's parent, guardian, or legal custodian, and  
27 the person named in a report as having abused a child) in Code  
28 section 232.71B are expanded to also include the employer if  
29 the abuse is employment-related.

30 Code section 235A.19, relating to requests for correction  
31 or expungement and appeals of child abuse findings or data, is  
32 amended to allow the subject of a child abuse report to file  
33 an expedited request. The procedure in current law requires  
34 the request to be filed within six months of the issuance date  
35 of the notice of assessment results. The expedited process in

1 the bill can be used in lieu of the procedure under current law  
2 and the request must be filed within 15 days of the notice.  
3 The request is considered in a contested case hearing which  
4 must be held within 60 days and the department is prohibited  
5 from placing the child abuse information on the registry until  
6 the final agency action concerning the hearing decision. The  
7 hearing timeframe can be extended 30 days by the subject  
8 one time. Other extensions must be by mutual agreement or  
9 necessitated by good cause. The administrative law judge's  
10 proposed decision is required within 30 days of the hearing and  
11 if further review of that decision is requested, the agency  
12 decision is required within 30 days of the proposed decision.  
13 Current law in section 235A.19, subsection 3, authorizes an  
14 appeal of the decision from a hearing to the district court.  
15 This provision is amended to also reference the bill's new  
16 expedited process.